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1st Session

SENATE

REPORT
101-161

NORTH AMERICAN WETLANDS CONSERVATION ACT

OCTOBER 5 (legislative day, SEPTEMBER 18), 1989.—Ordered to be printed

Mr. BURDICK, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 804]

The Committee on Environment and Public Works, to which was referred the bill (S. 804) to conserve North American wetland ecosystems and waterfowl and other migratory birds and fish and wildlife that depend upon such habitats, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

GENERAL STATEMENT

This legislation encourages partnerships among public agencies and private interests to protect, enhance, restore and manage wetlands ecosystems and other habitats for migratory birds and other fish and wildlife in North America and to maintain or increase migratory bird populations consistent with the goals of the North American Waterfowl Management Plan and the international obligations of the migratory bird treaties and other agreements with Canada, Mexico, and other countries.

The bill establishes a nine-member North American Wetlands Conservation Commission to recommend wetlands conservation projects (acquisition, management, enhancement or restoration of lands and waters administered for long-term conservation) to the Secretary of the Interior for Federal funding based on criteria provided under the legislation. The bill authorizes the Secretary to match federally-appropriated funds with non-Federal funds for these projects in Canada, Mexico and the United States. Funding is provided from the interest earned through short-term investment of any Federal excise tax revenues in the Pittman-Robertson fund that are not needed to meet a current year's withdrawals (about

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$10 million annually); from authorization to appropriate the penalties or fines, or funds from forfeitures of property under the Migratory Bird Treaty Act (about $1 billion annually); and from authorization to appropriate an additional $15 million annually. The bill prohibits the Secretary from acquiring lands and waters for inclusion in the National Wildlife Refuge System with the funds under the legislation unless full funding is provided under the Refuge Revenue Sharing Act for payments in lieu of taxes to counties with U.S. Fish and Wildlife Service lands.

Purpose and Background

WETLANDS AND MIGRATORY BIRDS

The maintenance of 37 species of waterfowl and hundreds of other species of migratory birds in North America is dependent on the protection, restoration, and management of wetlands and other habitat in Canada, as well as in the United States and Mexico. Wetlands provide essential and significant habitat for fish, shellfish and other wildlife of commercial, recreational, scientific and aesthetic value, and for endangered and threatened species of animals and plants. Wetlands provide substantial flood and storm control values and can obviate the need for expensive man-made control measures. They make a significant contribution to water quality by recharging ground water, filtering surface runoff, and treating waste, and they provide natural areas important for recreational and aesthetic purposes.

From the mid-1950's to the mid-1970's, nine million acres of wetlands were drained, filled and cleared in the 48 contiguous States. Less than half of the original 200 million acres remain, and the destruction continues today at a rate of 450,000 acres per year—an area 12 times the size of the District of Columbia.

Total wetlands loss in the Canadian prairie provinces of Alberta, Saskatchewan and Manitoba is estimated to be 40 percent of the original wetlands acreage. Seventy-five percent of North America's waterfowl breed in Canadian wetlands. By contrast, 75 percent of the annual waterfowl harvest occurs in the United States.

Wetlands destruction, loss of nesting cover, and degradation of migration and wintering habitat have contributed to long-term downward trends in migratory bird species. The average number of North American ducks in recent years has been lower than any comparable period on record. While the U.S. Fish and Wildlife Service estimates a breeding duck population size averaging 62 million from 1970 to 1979, in 1985 there were an estimated 30 million ducks in the United States and Canada. The continued drought in the North American prairies has exacerbated the destruction and degradation of habitat. Mallard and pintail ducks have suffered the greatest decline in numbers.

Of the 30 species of migratory non-game birds that are currently of management concern to the U.S. Fish and Wildlife Service because of their uncertain status, nearly one half are dependent upon coastal and freshwater wetlands. Thirteen of some of our most abundant and widespread songbirds, like the American goldfinch and the eastern meadowlark, have declined at an average rate of nearly 3 percent per year over the past 20 years.

THE NORTH AMERICAN WATERFOWL MANAGEMENT PLAN

The North American Waterfowl Management Plan was signed in 1986 by the United States Secretary of the Interior and the Canadian Minister of the Environment. The Plan is a statement of needs, objectives and strategies to protect, restore, and enhance an adequate habitat base to perpetuate populations of North American waterfowl. It establishes a goal, which is to be achieved by the year 2000, to restore the continent's waterfowl not to the numbers that existed in the 1950's but only to the lower levels of a decade ago (62 million breeding ducks). To achieve these waterfowl numbers, the Plan calls for the protection, restoration and enhancement of 1.93 million acres of waterfowl habitat in the United States and 3.67 million acres in Canada.

The extent of habitat destruction has been so great that even achieving this modest target will require an unprecedented cooperative strategy in the United States and Canada.

The Plan recognizes that the key to its success will be joint ventures that provide for participation not only by the national governments of the two countries, but also involvement by State, provincial, territorial and local governments, and private individuals, conservation organizations and businesses.

The principal waterfowl habitat areas targeted by the Plan for joint ventures are the Central Valley of California; the prairie pothole region of Montana, North Dakota, South Dakota, Minnesota and Iowa; the lower Mississippi River region; the Gulf Coast; the Atlantic Coast from Maine to South Carolina; the lower Great Lakes-St. Lawrence River basin; portions of five eastern Canadian provinces; and the prairie-parkland provinces of Canada.

The Plan establishes an implementation committee consisting of six governmental members from each country, but does not specify any means of implementation, nor does the Plan commit either country to specific actions or funding. The Plan also makes no provision for cooperation with Mexico.

S. 804 provides the structure to carry out the Plan and commits the United States to providing the Federal matching funds essential to encouraging public and private partnerships for wetlands conservation projects in Canada and Mexico, as well as in the United States. The bill also makes provision for cooperative efforts with Mexico and for revision of the Plan to include Mexico.

IMPLEMENTATION OF THE NORTH AMERICAN WATERFOWL MANAGEMENT PLAN

Public Law 100–240, amendments to the National Fish and Wildlife Foundation Establishment Act, authorized appropriation of up to $5 million annually in Federal matching funds to the Foundation (a congressionally-established charitable, non-profit organization) and allowed these funds to be spent in foreign countries for fish and wildlife conservation.

In fiscal year 1988, the Foundation received an appropriation of $2 million in matching funds to support wetlands protection efforts in Canada. The Foundation matched these funds with $1 million from Ducks Unlimited and $1 million contributed by 11 States

(California, Oregon, Colorado, Texas, Oklahoma, Arkansas, Louisiana, Illinois, New Jersey, South Carolina and New York). This $4 million from United States sources was matched by $4 million from Canadian sources.

For fiscal year 1989, the Foundation received another appropriation of $2 million which will be matched with $4 million from Ducks Unlimited and $3 million from individual States. Of this total amount, $6 million will be matched by $2 million from Canadian sources for projects in that country, and $3 million will be used for projects in the United States. The Foundation allocated another $2 million for matching with State and private entities to carry out North American Waterfowl Management Plan projects in the United States.

Under the authority of the Emergency Wetlands Resources Act of 1986, Congress has appropriated $6 million in fiscal year 1988 and $10 million for fiscal year 1989 from the Land and Water Conservation Fund for Federal purchase of wetlands in the United States which meet the objectives of the North American Waterfowl Management Plan.

Section-by-Section Analysis

SECTION 2. FINDINGS AND STATEMENT OF PURPOSE

Section 2(a) of the bill provides the findings by Congress with respect to wetlands and the conservation of migratory birds and other fish and wildlife.

Section 2(b) of the bill states that the purposes of the Act are to encourage partnerships among public agencies and private interests (1) to protect, enhance, restore, and manage an appropriate distribution and diversity of wetland ecosystems and other habitats for migratory birds and other fish and wildlife in North America; (2) to maintain current or improved distributions of migratory bird populations; and (3) to sustain an abundance of waterfowl and other migratory birds consistent with the goals of the North American Waterfowl Management and the international obligations of the migratory bird treaties and other agreements with Canada, Mexico, and other countries.

To achieve these objectives, the bill establishes a structure to carry out the Plan; requires the Plan to be revised to broaden its focus and the membership of those involved in its implementation; and commits the United States to providing the Federal matching funds essential to encouraging public and private partnerships for wetlands conservation projects in Canada and Mexico.

SECTION 3. DEFINITIONS

Section 3 of the bill defines the terms used in the legislation, including "Agreement," and "appropriate Committees," "flyway," "migratory birds," "Migratory Bird Conservation Commission," "Plan," "Secretary," "State," and "wetlands conservation project."

The term "wetlands conservation project" includes acquisition restoration, management, or enhancement of wetlands. Acquisition of wetlands includes purchase of easements and must be from willing sellers or donors and be administered for the long-term conser-

vation of the wetlands and fish and wildlife. Restoration, management, and enhancement must be conducted on areas that are administered for the long-term conservation of wetlands and fish and wildlife.

The term "restoration" in the definition of the term "wetlands conservation project" refers to the rehabilitation of a naturally occurring but degraded wetland ecosystem. For example, the removal of drainage tile or elimination of a pollution source might serve to restore a degraded wetlands. The term "enhancement" in the definition refers to the modification of a wetland ecosystem to improve its value for migratory birds and other fish and wildlife.

It is not intended that approval of Federal funds for wetlands conservation projects under this legislation be interpreted as exempting or requiring favorable consideration of such projects under section 404 of the Clean Water Act or any other Federal or State requirements or constraints related to the alteration of wetlands. Nor is this legislation intended to encourage the modification of existing, naturally functioning wetlands to provide narrow benefits, such as waterfowl production, if such benefits are achieved at the expense of broader benefits for conservation of fisheries and wildlife and wetland ecosystems. Obviously degraded or significantly less productive habitats should be considered prime candidates for habitat restoration.

In the acquisition of lands authorized by this legislation, the Fish and Wildlife Service should continue its present land acquisition policy of obtaining lands or waters or interests therein from willing sellers or donors. The definition of "wetlands conservation project" is not intended to preclude the Service from using condemnation proceedings in cases in which its use would assist in the determination of the legal owner.

Where possible, the term "long-term conservation" should be interpreted in a manner that will result in habitat being reserved in perpetuity for fish and wildlife conservation. Easements to conserve wetland ecosystems for 25 years or more, while less desirable than perpetual easements, also would be consistent with the requirement for long-term conservation. In some cases, purchase of easements to conserve habitat for less than 25 years, or even for 10 years or less, may be appropriate if the purchase is likely to result in the landowner agreeing to a longer term conservation agreement at the expiration of the initial easement.

Wetlands conservation projects should allow for public access to the extent that allowing such access does not interfere with the acquisition, restoration, management, or enhancement of the wetland ecosystem and other habitat, and to the extent that allowing such access is compatible with the long-term conservation of the wetlands ecosystems, other habitats and the fish and wildlife dependent thereon. In some cases, habitat conservation may preclude public access. When access is provided to land acquired in fee using Federal funds, it should not be discriminatory based on membership to a club or otherwise. However, limitations on the number of people permitted access or the time at which access is permitted may be appropriate.

The term "migratory birds" as used in the legislature means all wild birds native to North America that are in an unconfined state

and that are protected under the Migratory Bird Treaty Act. The definition of this term in the bill states specifically that it includes species listed under the Endangered Species Act and species defined as nongame under the Fish and Wildlife Conservation Act of 1980 in order to emphasize that the term "migratory birds" as used in the legislation is not intended to be a synonym for waterfowl.

SECTION 4. ESTABLISHMENT OF NORTH AMERICAN WETLANDS CONSERVATION COMMISSION

Section 4 of the bill establishes a nine-member North American Wetlands Conservation Commission to recommend wetlands conservation projects to the Secretary of the Interior for Federal funding under the Act. Wetlands acquisition by the Secretary under the Migratory Bird Conservation Fund, Land and Water Conservation Fund or other laws is not subject to this process or otherwise affected by the legislation, as clarified under section 13 of the bill.

Under section 4(a) of the bill, the Commission is to consist of the Director of the U.S. Fish and Wildlife Service, the Secretary to the Board of the National Fish and Wildlife Foundation and seven individuals appointed by the Secretary. Four of these individuals must live in different flyways and be directors of State fish and wildlife agencies directly responsible for conservation of fish, wildlife and wetlands. The term "fish and wildlife agency" means any department, or any division of any department of another name that is empowered under its laws to exercise the functions exercised by a State fish and wildlife agency. As such, it refers to those agencies that receive funds under the Pittman-Robertson and Wallop-Breauz wildlife and sport fish restoration programs. The other three individuals appointed to the Commission must represent different charitable, non-profit organizations. The charitable, non-profit organizations that may be represented on the North American Wetland Conservation Commission include not only those that are actively participating in implementing the Plan, but also those that are carrying out other wetlands conservation projects under the Act or the Tripartite Agreement with Mexico. The phrase "actively participating in carrying out wetlands conservation projects under this Act, the Plan or the Agreement" means that the private organization, government agency or Native American interest has made a substantial financial or material contribution to carrying out such projects. Membership on the U.S. Implementation Board for the North American Waterfowl Management Plan does not, in and of itself, constitute active participation for the purposes of this legislation.

Ex officio non-voting members of the Commission include representatives of government agencies in Canada and Mexico, the Environmental Protection Agency and other appropriate U.S. Federal agencies, and Native American interests that are actively participating in carrying out wetlands conservation projects under the bill, the Plan or the Tripartite Agreement with Mexico.

SECTION 5. APPROVAL OF WETLANDS CONSERVATION PROJECTS

Section 5 of the bill requires the Commission's recommendations on funding of wetlands conservation projects to be based on (1) the

availability of sufficient non-Federal money; (2) the extent to which any project represents a public-private partnership; (3) the consistency of any project in the United States with the National Wetlands Priority Conservation Plan developed under the Emergency Wetlands Resources Act; (4) the extent to which any project fulfills the purposes of the Act and the goals of the Plan and the Agreement; (5) the extent to which any project would aid the conservation of migratory nongame birds, other fish and wildlife and species that are listed, or are candidates to be listed, as threatened and endangered under the Endangered Species Act; (6) the recommendations of any partnerships among public agencies and private entities in Canada, Mexico or the United States, which are participating actively in carrying out any projects under the Act or the Plan; and (7) the substantiality of the character and design of any project.

It is intended that wetlands conservation projects funded under this legislation provide the broadest benefits to the conservation of such ecosystems and the fish and wildlife dependent thereon. Therefore, priority should be given to funding those projects that best satisfy all seven criteria. Projects that rank highly with respect to one or two of the criterion but only minimally satisfy the other criteria should receive lower priority for funding under this legislation. Projects to convert a valuable wetland ecosystem that provides broad benefits for fisheries and wildlife and the public to a type of wetland area that provides narrow benefits for relatively few species and a small segment of the public should receive lower priority for funding under this Act than projects that protect existing wetland ecosystems or projects that restore or enhance degraded wetland ecosystems.

Section 5(b) of the bill requires the Commission to submit to the Secretary, a description of the wetlands conservation projects that the Commission has determined meet the criteria under section 5(a) and that it recommends that the Secretary approve for funding. These projects are to be listed in order of the priority that the Commission gives to funding them. The requirement that the Commission submit its recommendations by March 30 of each year is intended to provide sufficient time for the Secretary to include adequate funding for the recommended projects in the Department's budget request for the next fiscal year.

Under section 5(d) of the bill, the Secretary is required to approve the Federal funding available under the Act for the wetlands conservation projects in the order of priority recommended by the Commission unless the Secretary finds that any of those projects should not have been recommended or that the order of priority for project funding should be modified based on consideration of the criteria listed in section 5(a). The Secretary must consult with the Migratory Bird Conservation Commission (MBCC) concerning approval of projects recommended by the North American Wetlands Conservation Commission. It is expected that the Secretary will give great deference to the recommendations made by the North American Wetlands Conservation Commission.

Section 5(e) requires an annual report to Congress from the Secretary that includes a description of the projects approved by the Secretary for funding, in the order of priority approved by the Sec-

retary; a justification for these actions; and a list and description of the projects which the Commission recommended, in order of priority, that the Secretary approve. The intent of this provision is to allow this Committee and the other appropriate Committee in the House of Representatives to review decisions by the Secretary and the Commission with respect to compliance with the criteria under section 5(a) in recommending and approving funding of projects.

To minimize disagreement among the Secretary, the Commission and the Committees with respect to compliance of projects with the criteria under section 5(a), it is recommended that the Secretary and the Commission, in consultation with the Committees, reach an agreement on interpretation of the criteria and method of establishing the order of priority for funding consistent with the criteria.

SECTION 6. CONDITIONS RELATING TO WETLANDS CONSERVATION PROJECTS

Section 6 of the bill authorizes the Secretary of the Interior to match federally-appropriated funds with non-Federal funds for wetland conservation projects (acquisition, management, enhancement or restoration of lands and waters administered for long-term conservation) in Canada, Mexico and the United States.

To carry out projects in the United States, the Secretary may, under section 6(a) grant or otherwise provide the Federal funds made available under this legislation or convey any lands and waters purchased with Federal funds without cost to a State or a private entity approved by a State. Any grant recipient must have been identified in advance in the project description accompanying the recommendation from the Commission and approved by the Secretary. The Secretary cannot convey any property to a private entity unless the approving State is committed to undertake management of the property if the private entity fails to manage it properly or voluntarily abandons it, and ownership of the property reverts to the State under those circumstances. Conveyance of any property must be subject to conditions that will ensure that it is administered for the long-term conservation and management of the wetland ecosystem and its fish and wildlife. If lands and waters purchased with Federal funds are not conveyed, they must be included in the National Wildlife Refuge System and managed in accordance with the National Wildlife Refuge Administration Act.

To carry out projects in Canada or Mexico, the Secretary may, under section 6(b), provide Federal funds to public agencies or private entities approved by these agencies to assist in carrying out approved wetlands conservation projects. Any recipient of such a grant must be identified in the project description accompanying the recommendation from the Commission and approved by the Secretary. The Secretary can only provide grants if they are subject to conditions that will ensure that any property acquired, enhanced, managed or restored with the grant funds will be administered for the long-term conservation and management of wetland ecosystems and their fish and wildlife. Property acquired with grant funds in Canada or Mexico does not become part of the Na-

tional Wildlife Refuge System. Once Federal funds are provided to other entities under section 6(b), they cease to be Federal funds.

SECTION 7. AMOUNTS AVAILABLE TO CARRY OUT THIS ACT

Under section 7 of the bill, funds to carry out wetlands conservation projects are provided from three sources.

First, under section 7(a) the interest earned through short-term investment of any Federal excise tax revenues in the Pittman-Robertson fund that are not needed to meet a current year's withdrawals would be available without further appropriation to the Secretary under the Pittman-Robertson Act for use in carrying out projects under this legislation. Based on the amount of revenues generated under the Wallop-Breaux program from similar investment of Federal excise tax revenues, it is estimated that section 7(a) would generate approximately $10 million annually. None of the fund's excise tax revenues (the fund's capital) would be allowed to be used by the Secretary to carry out this legislation. Thus, the bill has no effect on the amount of the fund apportioned to any State or territory.

The purpose of the Pittman-Robertson program is to finance wildlife restoration and hunter education activities conducted by State agencies legally responsible and accountable for wildlife. The use of interest earned by investment of unapportioned Pittman-Robertson funds under this legislation is in keeping with the spirit of the Pittman-Robertson Act because it expedites wetlands conservation projects that are in accord with State interests. Moreover, the interest earned by investment of Pittman-Robertson funds is made available for apportionment to the States with those funds at the beginning of fiscal year 2006.

Second, under section 7(b), the penalties or fines, or funds from forfeitures of property under the Migratory Bird Treaty Act are authorized to be appropriated to carry out the Act. It is estimated that these sources of revenue amount to approximately $850,000 annually. To ensure that section 7(b) does not interfere with the authority of the U.S. Fish and Wildlife Service to seize vessels and other means of transportation used in violation of the Migratory Bird Treaty Act and to press these means of transportation into official service, this provision makes clear that it should not be construed to require the sale of instrumentalities.

Third, under section 7(c), in addition to the amounts above, the legislation authorizes appropriation of $15 million annually to the Department of the Interior to carry out wetlands conservation projects. The funds appropriated under this section are critical to implementation of the legislation and the North American Waterfowl Management Plan. Existing wetlands conservation efforts are not sufficient to implement adequately the legislation and the Plan. Therefore, the funds appropriated under sections 7(b) and 7(c) should be in addition to the existing amounts appropriated for wetlands conservation.

SECTION 8. ALLOCATION OF AMOUNTS AVAILABLE TO CARRY OUT THIS ACT

A principal purpose of this legislation is to ensure that the Federal Government fulfills its commitment under the North American Waterfowl Management Plan to assist in the conservation of wetland ecosystems in Canada. Therefore, under section 8(a) of the bill, up to 70 percent, but not less than 50 percent, of each year's funds must be allocated by the Secretary to carry out approved wetlands conservation projects in Canada and Mexico. The range in the percentage of funds that must be allocated to projects in Canada and Mexico is intended to provide some flexibility in a given year with respect to whether projects are funded in the United States or in Canada and Mexico. However, consistent with the North American Waterfowl Management Plan's recommendation that the United States provide 75 percent of the amount needed to improve waterfowl habitat on 3.6 million acres in prairie Canada, it is intended that amounts allocated for projects outside the United States should approach 70 percent over time. Up to 4 percent of this amount may be used for administering the Act. The Federal money for projects in Canada or Mexico must be matched by at least 25 percent non-Federal money. The non-Federal share may not be derived from Federal grant programs, such as the Pittman-Robertson and Wallop-Breaux programs.

At least 30 percent, but not more than 50 percent, of each year's funds must be allocated by the Secretary to carry out approved wetlands conservation projects in the United States. The Federal money to carry out approved wetlands conservation projects in the United States must be matched by at least 50 percent non-Federal money. The Federal share may be 100 percent if the project is conducted solely on Federal lands and waters or involves the acquisition of inholdings within such lands and waters. The non-Federal share may not be derived from Federal grant programs.

SECTION 9. REFUGE REVENUE SHARING

Section 9 of the bill prohibits the Secretary from acquiring lands and waters for inclusion in the National Wildlife Refuge System with the funds under the Act unless full funding is provided under the Refuge Revenue Sharing Act for payments in lieu of taxes to counties with U.S. Fish and Wildlife Service lands.

Under the Refuge Revenue Sharing Act, the U.S. Fish and Wildlife Service makes payments to counties in which Service lands are located, based on their fair market value, in order to compensate these local jurisdictions for the loss of tax revenues that results from Federal acquisition of private lands. Refuge revenue sharing funding is derived partially from net revenues on the sale of products (such as timber, oil and gas, and minerals) from refuge lands. If net revenues are insufficient to provide full payment to counties, then under the Refuge Revenue Sharing Act the balance is to be made up by direct appropriation. Unfortunately, since 1980 the President has not requested and Congress has not appropriated sufficient funds to provide 100 percent of the entitlement under the Act. The decline in the percent of entitlement paid to counties over the past decade has been dramatic because, while revenues and ap-

propriations have remained fairly constant, the value and amount of Service lands have increased substantially.

The large and growing shortfall in the National Wildlife Refuge Fund is an increasingly serious problem. Some counties in which refuges are located are losing a substantial amount of revenue for support of schools and other services. This lost revenue has an especially negative impact in States where the amount and value of refuge lands are significant. In addition, the deficit also harms the National Wildlife Refuge System as a whole by causing some States and counties to oppose having lands withdrawn from their tax rolls for conservation purposes. In the eyes of local governments, the Federal Government has broken the promise it made to counties in which refuge lands are located.

Therefore, section 9 of the bill is intended to ensure that the legislation does not aggravate the in lieu of tax payment shortfall. The provision also is intended to call attention to and increase pressure to secure full Refuge Revenue Sharing payments so that our promise to counties is fulfilled and our National Wildlife Refuge System is protected and enhanced. Federal funds may be provided to assist with State and private acquisition efforts, however, in the absence of full refuge revenue sharing payments.

SECTION 10. RESTORATION, MANAGEMENT, AND PROTECTION OF WETLANDS AND HABITAT FOR MIGRATORY BIRDS ON FEDERAL LANDS

Section 10 of the bill requires each Federal agency responsible for acquiring, managing or disposing of Federal lands and waters, consistent with the agency's mission, to cooperate with the Director of the U.S. Fish and Wildlife Service to restore, protect and enhance the wetland ecosystems and other waterfowl and migratory bird habitats within its lands and waters.

SECTION 11. REPORTS TO CONGRESS

Section 11 of the bill requires the Secretary to report to Congress every two years with an assessment of the following:

(1) the estimated number of acres of wetlands and habitat for waterfowl and other migratory birds that were restored, protected or enhanced during such two-year period by Federal, State and local agencies and private entities in the United States, Canada and Mexico; and

(2) trends in the population size and distribution of North American migratory birds.

The Secretary also is required under this provision of the bill to report annually to Congress concerning the status of wetlands conservation projects, including an accounting of Federal, State and private expenditures and expenditures by Canadian and Mexican sources to carry out these projects.

SECTION 12. REVISIONS TO THE PLAN

One of the purposes of this legislation is to encourage revisions to the North American Waterfowl Management Plan in a manner consistent with the provisions of this legislation, in particular to broaden the focus of that Plan with respect to conservation of wetland ecosystems and the other migratory birds and other fish and

wildlife dependent thereon. Section 12 of the bill, therefore, requires the Secretary, in 1991 and every 5 years thereafter, with the appropriate officials in Canada, to revise the goals and other elements of the Plan in accordance with the information required under section 11 and with the other provisions of the legislation. The provisions of this legislation apply to Mexico in the same fashion as they apply to Canada even though the Plan does not include Mexico. The Secretary is required to invite and encourage the appropriate officials in Mexico to participate in any revisions to the Plan. It is expected, therefore, that the Secretary will do everything possible to encourage Mexican participation in the Plan when it is revised. If such efforts by the Secretary prove unsuccesssful, then it is expected that the Secretary will reach a separate agreement with Mexico that will enable this legislation to be implemented fully with respect to that country.

SECTION 13. RELATIONSHIP TO OTHER AUTHORITIES

Section 13 of the bill clarifies that nothing in the legislation affects the Secretary's authority to acquire lands under the Land and Water Conservation Fund Act, the Emergency Wetlands Resources Act, the Migratory Bird Conservation Act, or other statutes.

The Federal funds made available by the Act may not be used for fish and wildlife mitigation purposes under the Fish and Wildlife Coordination Act or the 1986 Water Resources Development Act.

HEARINGS

A hearing on S. 804 was conducted by the Subcommittee on Environmental Protection on June 1, 1989, in Washington, D.C. The following witnesses testified at that hearing: representatives of the Department of the Interior, the International Association of Fish and Wildlife Agencies, the National Fish and Wildlife Foundation, Wildlife Habitat Canada, Ducks Unlimited, Inc., the Nature Conservancy, the Wildlife Management Institute, and the National Wildlife Federation.

ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committees on Environment and Public Works require that many rollcall votes taken during consideration of this bill be announced in this report.

The bill was ordered reported on July 20, 1989, by unanimous voice vote.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires each bill to contain a statement of the cost of such bill prepared by the Congressional Budget Office. That report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 2, 1989.

Hon. QUENTIN N. BURDICK,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 804, the North American Wetlands Conservation Act.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 804.
2. Bill title: North American Wetlands Conservation Act.
3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, July 20, 1989.
4. Bill purpose: S. 804 would establish a nine-member commission to recommend wetlands conservation projects to the Secretary of the Interior. The Secretary, acting through the U.S. Fish and Wildlife Service (USFWS), would be directed to finance approved projects with funds made available under Section 7 of the bill.

Section 7 would amend the Act of September 2, 1937 (commonly referred to as the "Pittman-Robertson Act") to require the investment of balances in the Federal Aid in Wildlife Restoration Fund that are not needed for a given year's withdrawals. Interest earnings from the investments would be credited to that fund and would be available to the Secretary (until fiscal year 2006) for wetlands conservation programs authorized under this bill. (Beginning in fiscal year 2006, the interest would become available for the Federal Aid in Wildlife Restoration program.) This section would also authorize the appropriation of amounts collected from fines, penalties and asset forfeitures under the Migratory Bird Treaty Act. An additional $15 million for each of fiscal years 1990–1993 would be authorized for appropriation from the general fund of the U.S. Treasury.

Under Section 8 of the bill, 50 to 70 percent of all amounts available to the Secretary in each year from the above sources (less up to 4 percent for administrative expenses) would be used to support approved conservation projects in Canada and Mexico. The balance would be used for domestic projects.

Section 9 of the bill would prohibit the Secretary from using amounts allocated for domestic projects to increase USFWS land holdings unless the Congress appropriates sufficient funds to make full payments under the Refuge Revenue Sharing Act.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1990	1991	1992	1993	1994
Direct spending:					
Estimated budget authority		6	7	8	8
Estimated outlays		4	7	8	8
Authorizations:					
Estimated authorization level	16	16	16	16	1
Estimated outlays	11	16	16	16	5

The costs of this bill fall within budget function 300.

Basis of estimate: For purposes of this estimate, it is assumed that S. 804 will be enacted by December 1, 1989, and that the entire amounts authorized will be appropriated for each fiscal year. CBO has also assumed that interest earned on invested Pittman-Robertson funds under Section 7 would become available to the USFWS without appropriation action in the year after it is earned. The direct spending shown in the above table—outlays of $4 million in 1991, rising to $8 million by 1994—is the result of this new spending authority. (Interest earned by the fund would be exactly offset by increased interest payments on the public debt. While such intragovernmental transfers would have no net impact on the federal budget, the subsequent use of the amounts earned would result in new federal outlays from direct spending.)

The estimated authorization level for conservation projects includes the specified $15 million annually through fiscal year 1993 plus an estimated $700,000 a year derived from Migratory Bird Treaty Act collections. (These collections currently are deposited into the general fund.)

The impact of Section 9 on annual appropriations is uncertain. Under the provisions of this section, the USFWS would be prevented from using any of the funds made available in this bill to increase its own land holdings if the Congress fails to appropriate sufficient funds to cover shortfalls in the National Wildlife Refuge Fund (NWFR). Under the Refuge Revenue Sharing Act, payments are made from the NWRF to counties in lieu of property taxes on all USFWS land within their borders. The amount of such payments is determined by a series of formulae and is intended to be paid from net offsetting reciepts derived from USFWS lands. The act authorizes the appropriation of additional sums to supplement net receipts if they are insufficient to cover the formula payments. In practice, the Congress rarely appropriates the full amount of the shortfall, and each county's payment is reduced proportionately. Fiscal year 1989 appropriations to the NWRF were about $6.6 million. If the restrictions contained in Section 9 of this bill induce the Congress to fully fund the formula payments, federal spending would be increased over CBO baseline levels by at least $5 million in fiscal year 1990 and by at least $7 million annually by 1994. Failure to provide full funding for county payments would likely result in a different mix of projects carried out under this act, but total spending levels would not be affected.

Outlays for conservation programs have been estimated on the basis of historical spending for similar activities.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Deborah Reis.
10. Estimate approved by: C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact

Section 11(b) of rule XXVI of the Standing Rules of the Senate require the Committee to evaluate the regulatory impact of the reported bill.

It is not anticipated that this bill will impose any significant new regulatory burden.

Changes in Existing Law

In the opinion of the Committee, it is necessary to dispense with the requirements of subsection (4) of rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate.

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